

REMARKS

In accordance with the Final Office Action, Claims 13-31 stand rejected. More particularly, the Examiner rejected Claims 13-31 under 35 U.S.C. §102(e) contending that such claims were anticipated by United States Patent No. 6,747,917 to Jennings et al. (Jennings). Applicant submits that independent Claims 13, 21 and 27 are not anticipated by Jennings and therefore respectfully requests withdrawal of such rejection and allowance of Claims 13-31.

Independent Claim 13 is directed to an apparatus for providing daily visual indications relating to various phases of a woman's menstrual cycle. The apparatus of Claim 13 includes: (1) a string; (2) a first bead positionable on the string to indicate the first day of a menses phase of the woman's menstrual cycle, the first bead being removable from the string at the end of the woman's menstrual cycle; (3) a plurality of second beads positionable on the string to indicate each additional day of the menses phase, the second beads having a different appearance from the first bead and being removable from the string at the end of the woman's menstrual cycle; (4) a third bead positionable on the string to indicate the day the woman's menses phase crosses over to a fertile phase of the woman's menstrual cycle, the third bead having a different appearance from the first and second beads and being removable from the string at the end of the woman's menstrual cycle; (5) a plurality of fourth beads positionable on the string to indicate each additional day of the fertile phase, the fourth beads having a different appearance from the first, second and third beads and being removable from the string at the end of the woman's menstrual cycle; (6) a fifth bead positionable on the string to indicate the day the woman's cervical mucus begins drying up, the fifth bead having a different appearance from the first, second, third, and fourth beads and being removable from the string at the end of the woman's menstrual cycle; (7) a plurality of sixth beads positionable on the string to indicate each additional day the woman's cervical mucus is drying up, the sixth beads having a different appearance from the first, second, third, fourth and fifth beads and being removable from the string at the end of the woman's menstrual cycle; (7) a seventh bead positionable on the string to indicate the first day of an infertile phase of the woman's menstrual cycle, the seventh bead having a different appearance from the first, second, third, fourth, fifth, and sixth beads and being removable from the string at the end of the woman's menstrual cycle; and (8) a plurality of eighth beads positionable on the string to indicate each additional day of the infertile phase, the eighth beads having a different appearance from the first, second, third, fourth, fifth, sixth and

seventh beads and being removable from the string at the end of the woman's menstrual cycle. This combination of limitations is not disclosed by Jennings, and therefore Claim 13 cannot be properly rejected under 35 U.S.C. §102(e) based on Jennings.

More particularly, the Jennings device does not include eight different types of beads positionable on a string which all have a different appearance from one another and which are removable from the string at the end of the woman's menstrual cycle. Rather, FIGS. 1 and 2 of Jennings depict a necklace or loop 100 or chain 200 that include thirty-two similarly shaped and sized beads, and Jennings describes that the thirty-two beads may be of up to four different colors with a third one of the colors being luminescent. In the case of the necklace or loop 100, Jennings discloses that a smaller optional thirty-third bead may be included to signify the end of the menstrual cycle. (See Jennings, Col. 6, line 28 through Col. 8, line 34). Thus, Jennings discloses at most five different types of beads.

Furthermore, the indications provided by the beads in the Jennings reference and in the apparatus of Claim 13 are different. Jennings describes that the first color bead represents the first day of menstrual bleeding, the second color beads represent early and late infertile days, the third color beads represent fertile days, and the fourth color bead (which is the 27th bead on the string) serves as a marker to alert a woman to see her health care provider if she gets her period prior to the 27th day of her menstrual cycle. (See Jennings, Col. 6, lines 28-40, Col. 7, lines 39-51, Col. 8, lines 10-34, and Col. 8, lines 47-59). This in contrast with the apparatus of Claim 13 wherein the first bead indicates the first menses phase day, the second beads indicate additional menses phase days, the third bead indicates a crossing over from the menses phase to the fertile phase, the fourth beads indicate additional fertile phase days, the fifth bead indicates when the woman's cervical mucus begins drying, the sixth beads indicate additional days on which the woman's cervical mucus is drying, the seventh bead indicates the first infertile phase day, and the eighth beads indicate additional infertile phase days.

In addition to the aforementioned differences with Jennings, the beads of the apparatus of Claim 13 are not fixed in position on the string as in the Jennings device but instead are removable thereby allowing for positioning of the beads in desired numbers and orders to accommodate different menstrual cycles. In this regard, the apparatus of Claim 13 is used by placing a different, specific bead for each day of monitoring instead of moving a rubber band marker along a pre-configured set of beads each day as with the Jennings device. (See Jennings,

Col. 7, lines 26-38 and Col. 8, lines 35-46). This difference is particularly notable in that the pre-configured necklace or chain of Jennings may not be appropriate for use by women having menstrual cycles falling outside of regular 26 to 32 day cycles. In fact, Jennings specifically acknowledges this at Col. 7, lines 46-51 and Col. 8, lines 47-59. Further, Jennings describes that the ends of the necklace or chain should be securely knotted or fastened to prevent tampering, such that the beads cannot be removed and the order of the beads is preserved. Jennings Col. 6, lines 54-56 and Col. 8, lines 23-26. Thus, Jennings specifically discourages modifications to accommodate different menstrual cycles. Further, since all beads are removable with Applicant's claimed apparatus, the beads are ready to be used again to provide indications for the woman's next menstrual cycle, but not necessarily in the same order as the previous month thereby accommodating variations in the woman's cycle from month to month.

Independent Claim 21 is directed to an apparatus that provides daily visual indications relating to various phases of a woman's menstrual cycle. The apparatus of Claim 21 includes: (1) an ovulation prediction kit for determining the day during a fertile phase of the woman's menstrual cycle when a level of luteinizing hormone released by the woman's pituitary gland surges; (2) a string; (3) a first type of bead positionable on the string to indicate the first day of a menses phase of the woman's menstrual cycle and removable from the string at the end of the woman's menstrual cycle; (4) a plurality of a second type of beads positionable on the string to indicate each additional day of the menses phase and removable from the string at the end of the woman's menstrual cycle; (5) a third type of bead positionable on the string to indicate the day the woman's menses phase crosses over to a fertile phase of the woman's menstrual cycle and removable from the string at the end of the woman's menstrual cycle; (6) a plurality of a fourth type of beads positionable on the string to indicate each additional day of the fertile phase and removable from the string at the end of the woman's menstrual cycle; (7) a fifth type of bead positionable on the string to indicate the day the woman's cervical mucus begins drying up and removable from the string at the end of the woman's menstrual cycle; (8) a plurality of a sixth type of beads positionable on the string to indicate each additional day the woman's cervical mucus is drying up and removable from the string at the end of the woman's menstrual cycle; (9) a seventh type of bead positionable on the string to indicate the first day of an infertile phase of the woman's menstrual cycle and removable from the string at the end of the woman's menstrual cycle; (10) a plurality of an eighth type of beads positionable on the string to indicate each

additional day of the infertile phase and removable from the string at the end of the woman's menstrual cycle; and (11) a ninth type of bead positionable on the string to indicate the day when the luteinizing hormone level surges and removable from the string at the end of the woman's menstrual cycle. This combination of limitations is not disclosed by Jennings, and therefore Claim 21 cannot be properly rejected under 35 U.S.C. §102(e) based on Jennings.

As discussed previously, Jennings discloses a necklace or chain with at most five different types of beads. In contrast, the apparatus of Claim 21 recites nine different types of beads. Furthermore, each of the beads in Jennings is fixed in a pre-positioned order on the string, whereas the beads in the apparatus of Claim 21 are positionable on the string each day to provide the desired visual indications relating to the woman's menstrual cycle and are removable from the string at the end of the woman's menstrual cycle. Additionally, the menstrual phase indications provided by the beads of the Jennings device differ from the indications provided by the nine different types of beads in the apparatus of Claim 21. For example, the ninth type of bead in the apparatus of Claim 21 indicates the day when the woman's luteinizing hormone level surges, whereas Jennings does not mention any type of bead providing any such indication. Thus, even if the text in the Background section of Jennings discussing various proposed methods of predicting ovulation based on biochemical changes in various body fluids such as saliva, vaginal secretions and urine did anticipate the combination of an ovulation prediction kit and a bead-based fertility awareness apparatus (a combination which Applicant respectfully submits that the Jennings reference does not anticipate) Jennings does not disclose the combination of an ovulation prediction kit and a bead-based fertility awareness apparatus having a specified type of bead indicating the day when the woman's luteinizing hormone level surges.

Independent Claim 27 is directed to an apparatus that provides daily visual indications relating to various phases of a woman's menstrual cycle. The apparatus of Claim 27 includes: (1) a string; and (2) a plurality of beads, each bead being positionable on the string to indicate different days of the woman's menstrual cycle and removable from the string at the end of the woman's menstrual cycle. The plurality of beads includes: (a) two types of beads associated with a menses phase of the woman's menstrual cycle; (b) two types of beads associated with a fertile phase of the woman's menstrual cycle one of which is associated with the day the woman's menses phase crosses over to a fertile phase of the woman's menstrual cycle, wherein the type of bead associated with the day the woman's menses phase crosses over to the fertile

phase of the woman's menstrual cycle is orientable on the string to indicate a result of an observation of the woman's cervical mucus; (c) two types of beads associated with days on which the woman's cervical mucus is drying up; and (d) two types of beads associated with an infertile phase of the woman's menstrual cycle. This combination of limitations is not disclosed by Jennings, and therefore Claim 27 cannot be properly rejected under 35 U.S.C. §102(e) based on Jennings.

As discussed previously, Jennings discloses a necklace or chain with at most five different types of beads. In contrast, the apparatus of Claim 27 recites eight different types of beads. Furthermore, each of the beads in Jennings is fixed in a pre-positioned order on the string, whereas the beads in the apparatus of Claim 21 are positionable on the string each day to indicate different days of the woman's menstrual cycle and are removable from the string at the end of the woman's menstrual cycle. Additionally, Jennings does not disclose a fertility awareness apparatus including a bead that is orientable on the string to provide an indication of a result of an observation of the woman's cervical mucus.

In view of the noted deficiencies of Jennings as a reference, Jennings does not anticipate Claims 1, 21 and 27 and could not otherwise render the claimed apparatuses obvious in view of Jennings alone or in combination with other references. Since each of independent Claims 13, 21 and 27 are allowable, there is no need to separately address the patentability of the respective claims depending therefrom.

Conclusion:

Based upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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